

North Smithfield Zoning Board of Review

Meeting Minutes of September 18, 2007

The North Smithfield Zoning Board of Review met on Tuesday, September 18, 2007, at 7:00 PM at Kendall Dean School, 83 Greene Street, Slatersville, RI 02876.

Call to Order: The Chair called the meeting to order at 7:05 pm.

I. Call of the Roll

Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio (arrived at 7:20 pm), Steven Scarpelli, Guy Denizard, William Juhr, Dean Naylor, and Mario DiNunzio. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.

The Chair reviewed procedures of the board for all present.

II. Continued application of Robert C. and June E. Quinn, requesting a Special Use Permit per section 4.5, non-conforming uses of structures or of structures and premises in combination, subsection C. Locus is 1184 Providence Pike, Plat 11, Lot 225.

Mr. Benoit informed the Board that he had received a letter from Aram Jarret, attorney for the applicant, requesting to continue the

application to the next available date. Mr. Denizard made a motion to continue the application to October 2, 2007. Mr. Scarpelli seconded the motion, with all in favor.

III. Application of Susan Guerard, requesting a Special Use Permit, per section 5.4.2 (3) for a two-family dwelling, also a dimensional variance, per section 5.5, subsection 5.5.1. Locus is 348 Iron Mine Hill Road, Plat 17, Lot 48.

Susan Guerard was sworn in by the court stenographer. The Chair stated that the applicant had appeared before the Board previously to request a dimensional variance. At that time, she was advised to reapply for a Special Use Permit. She gave a brief summary of her property and the requests included in her application. She had previously appeared before the Zoning Board of Review to subdivide the property into two lots, so she could sell the large home and build a smaller home on the second lot for her family to live in. As a stipulation to the granting of the dimensional variance, the Zoning Board required the existing home be made into a single-family residence. However, the applicant would now like to convert the home back to a two-family home. The home has been on the market since May 2006, and Ms. Guerard says that it is too large to sell as a single-family home. The home is approximately 4,000 sq. ft., which is also too large to rent as a single-family home. She stated that they have had potential buyers who expressed they would be interested in buying the home as a two-family dwelling. The lot conforms to all

zoning regulations, except for 15-ft. of frontage.

The Chair stated that one option to resolve the frontage would be to merge the previously subdivided lots back into one and sell the entire property. Ms. Guerard stated that she would really like to build a very small, energy-efficient home on the other lot. Mr. Jühr asked her to review the history of the subdivision request. Ms. Guerard stated that the original lot was 9.5 acres. The lot was subdivided down the middle, resulting in two lots of over 4 acres each. Two-thirds of each lot were give to the town as a conservation easement. The two lots are long, narrow lots, and the conservation easement area is mainly in the back of each lot. There is also about an acre in the front that will be used as a conservation easement. This easement was granted to the town at the time of the prior variance.

The Chair asked how close the neighboring properties are to the lots. Ms Guerard stated that there is an 8-acre lot approximately 150-ft. from her property. The Chair asked if Ms. Guerard's existing home was used as a two-family home before the subdivision. Ms. Guerard stated that it was. The Chair asked about the plans for the home on the other lot. Ms. Guerard stated that it would be located about 450-ft. back into the woods from Iron Mine Hill Road. The home is planned as a 24'x36' energy-efficient home, resembling a barn. The field in front of the home (approximately 1 acre) will be the conservation easement. The Chair asked if the easement area has been surveyed. Ms. Guerard stated that it has not been professionally surveyed, but

there is a stonewall marking the beginning of the easement area.

Mr. Jühr asked about the septic system for the existing house. Ms. Guerard stated that it is suitable for a two-family house. It is designed for a 4-bedroom house, and each of the two residences in the house will have 2 bedrooms. Mr. Benoit stated that he had documentation, dated March 22, 2001, that shows that the septic system is approved for a 2-family home. This documentation was entered into the record as exhibit A.

The Chair stated that initially he was not in favor of granting the applicant's request, but in considering the testimony and evidence presented, he feels that granting the request will not negatively impact the town or neighborhood. He stated that the existing residence has a suitable septic system, 2/3 of each lot will be conservation easements, and the planned home to be built will be set back 450-ft. from the road and will not visually impact the neighborhood. The overall impact will not be significant.

The Board discussed that they would like the conservation easement clearly defined and recorded into the town's land evidence record with the deed. Mr. Rossi stated that the easement has probably already been recorded with the subdivision. Ms. Guerard stated that she believes it has been recorded. She submitted a plan that shows all easements and it was entered into the record as exhibit B.

Mr. Scarpelli made a motion to approve the applicant's request for a Special Use Permit, per section 5.4.2 (3) for a two-family dwelling, also a dimensional variance, per section 5.5, subsection 5.5.1, with the stipulation that all necessary documentation be signed and completed to establish both easements as shown on exhibit B. Mr. DiNunzio seconded the motion. Zoning Board vote was as follows: AYE: Mr. Kearns, Mr. Juhr, Mr. Scarpelli, Mr. Denizard, Mr. DiNunzio (Mr. Marcantonio did not sit on the Board for the vote. Mr. DiNunzio, first alternate member, voted in his place.) Motion passed, with a vote of 5-0.

IV. Application of The Homestead Group, requesting Special Use Permits, for flea market (outdoor retail sales in an open lot) per section 5.4.7 (20), attached dwelling for owner or operator per section 5.4.2 (5), and entertainment, performances, theatrical productions, wedding receptions, and parties per section 5.4.4 (18). Locus is 200 Industrial Drive, Plat 5, Lot 300.

Cheryl Custer, Facilities Director for The Homestead Group, was sworn in by the court stenographer. Ms. Custer stated that The Homestead Group leases the property from Pound Hill Development Group, LLC, which is owned by Peter Sangermano. Ms. Custer described the functions that the applicant would like to provide on the property. These functions include, weddings, wedding photography, dinner theater, flea markets, and dances. These functions are being held in support of people with developmental

disabilities and to maintain the property as it has existed (as Homestead Gardens). The flea markets would be held on the outskirts of the driveway in the front of the property. Parking is also available in back. The flea markets are proposed for once a month, with all materials (tables, etc.) from the event being packed away at the end of the day. Weddings, dinner theater, and dances would be held in the main building (barn—former gift shop), which has a fire code capacity of 122 people per event. The septic system supports functions of this size.

For larger events, held outdoors, portable toilets can be brought in. Other functions that are proposed are birthday parties and character visits (in conjunction with partnership with Kaleidoscope Theater). There is no alcohol and no smoking permitted on the property and will not be allowed at any functions. No cooking will take place on the property; all functions will be catered. There are no events planned for the existing tent located behind the barn, however, this tent has been inspected and approved by the Fire Department. Any additional tents would require a permit from the Town Council and inspection by the Fire Department.

The Board expressed concern over possible noise from functions. Ms. Custer stated that there are no plans for outdoor bands or music. Mr. Benoit stated that any outdoor sound systems require a permit from the Town Council. These permits are good only for a specific event, with a set date and time of operation. In response to the

Board's questions on planned dances, Ms. Custer stated that these would be holiday social events for people with developmental disabilities.

The Board also had concerns and questions with regard to parking. Ms. Custer stated that for larger functions, cars park in back on the grass. There was one big event (Grand Opening) that had a large crowd, so some parking was on Industrial Drive. Ms. Custer does not anticipate this happening again. Mr. Juhr questioned the environmental effects of parking on the grass in such close proximity to the pond. He asked if there was a limit of the number of cars allowed to park on grass. Mr. Benoit stated that there is nothing in the zoning ordinance to limit parking, but he will check with DEM.

Mr. Naylor expressed his concern that a Special Use Permit is granted to the property, not the applicant, and what might happen if the lease was ended. He stated that since the property is owned by a developer, the dancing permit could be used to open a nightclub or similar business. The Board discussed the possibility of limiting the special use to the present lessee. Mr. Rossi stated that it is difficult to end the granting of the special use permit once in place. He will research this issue to see if it is possible to grant the permit to the lessee, rather than the property itself. Mr. DiNunzio asked if the permit could be granted, conditioned on the no alcohol provision. Mr. Rossi stated that it would be an acceptable condition to prohibit alcohol on the property.

Ms. Custer informed the Board that the property will be tying into the sewer system when available. The sewers are being put in with the development on the abutting property. Ms. Custer also stated that they have plans to add an office building some time in the future. At this point, they are planning on moving the O'Donnell home on the abutting property to the Homestead Gardens property. Mr. Rossi informed the Board that as a condition to the Planning Board's decision to approve the development plan for Pound Hill Office Park, the O'Donnell home will be offered for sale to the Homestead Group, if they move it within a specified amount of time. Mr. Benoit stated that although this is a Manufacturing Zone, the home can be moved to the property if it is used as an office building and not a residence.

The Board asked about the caretaker's residence on the property. Ms. Custer stated that a small apartment, with no kitchen, is located on the top floor of the barn building. This is used for a caretaker to sleep in. The caretaker is responsible for the security of the property after business hours.

Mr. Denizard asked if each use could be considered separately, instead of granting a blanket approval. Mr. DiNunzio also suggested that the Board vote on part of the request and continue the remaining requests. Mr. Rossi stated that it might be easier to continue the entire application to give him a chance to conduct the legal research and research what, if any, conditions should be placed on the

application. Mr. Juhr stated that he felt that Mr. Naylor had brought up some important points with regard to the Special Use Permits being granted in perpetuity. He would like to wait to hear what Mr. Rossi finds out regarding the approval being attached to the lease, and what legal recourse the town would have in the future. The Board also had concerns that, with future expansion of the property, the capacity of the functions may be much greater than 122. Mr. Benoit stated that if capacity goes over 299, they will need to apply for another Special Use Permit.

Mr. Benoit also told the Board that the applicant would need to get a permit for each function from the Town Council. He also stated that, if at any time in the future the applicant or a future lessee of the property wanted to receive an alcohol permit, they would need to go to the Town Council to see if there are any available, and to get specific approval on their request.

Mr. Juhr made a motion to continue the hearing to October 16, 2007, so the Board can hear from Mr. Rossi's research on the legal ramifications on granting the request. Mr. Marcantonio seconded the motion, with all in favor.

V. Discussion of Memorandum Re: Zoning Enforcement Procedures

The Chair discussed a memorandum that had been prepared by Mr. Rossi and distributed to the Board, which addressed enforcement

procedures for zoning violations. If a member of the Board is informed of a possible violation, they should contact Mr. Benoit, who will investigate and determine whether or not a violation is taking place. If there is a violation, the property owner is notified and given a chance to correct it. If the violation is not corrected, the Town Council is informed and they can decide whether to pursue legal action. If they do decide to pursue legal action, the Building Official will inform the Town Solicitor.

Mr. Benoit stated that his office receives about 250-300 complaints a year, which he investigates. Mr. Rossi stated that the Board should keep this in mind when placing stipulations on approvals and make the stipulations practical and possible.

The Board also discussed the filing of their decisions and where they can look up information on a particular property. Mr. Benoit stated that he maintains files in his office, by plat and lot number. The Town Clerk's office also maintains books with all minutes and decisions filed by date. The books are indexed with the applicant's name. The Chair asked if the decisions were filed in land evidence records so that a new property owner is aware of all stipulations placed on the property. Mr. Benoit and Mr. Rossi stated that this information should be available, but this is something that should be double-checked. Mr. Jühr also asked if there are any digital records available, but there are not. All records are paper files.

Mr. Denizard made a motion to adjourn at 9:10 p.m., seconded by Mr. Scarpelli, with all in favor.

**Respectfully submitted,
Angela Pugliese, Clerk**

NOTE:

Addendum to minutes: attached transcript provided by Allied Court Reporters.